

[REDACTED]

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date: MAR - 1 1989

Dear Applicant:

We have considered your application for recognition of exemption from Federal Income Tax under Section 501(c)(3) of the Internal Revenue Code of 1986.

The information submitted discloses that you were formed as a trust on [REDACTED] in the State of [REDACTED].

The trust agreement provides no actual purpose clause as such. The following statements appear in your trust document.

The Trustee shall apply and distribute the net income and the principal of the trust in the following manner and upon the following terms and conditions:

All income and principal of the trust shall be distributed, at the sole discretion of the trustee, to or for the benefit of the Grantor for the remainder of his life.

Upon the death of the Grantor, the trustee shall make all necessary funeral arrangements through [REDACTED]. A Catholic funeral director shall be in charge of the funeral service and he shall purchase a [REDACTED] Vault, the Trustee shall arrange to have the proper dates inscribed on the memorial stones for Grantor's grave and that of his beloved wife, [REDACTED]. Grantor has established a burial trust for this purpose, however, if additional funds are needed, they shall be paid from this trust.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Surname	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Date	2/25/89	2/28/89	2/28/89	2/28/89	2/28/89	2/28/89	--

After the death of the Grantor, the trust shall continue for as long as legally possible, with the income and principal, distributed as follows:

At least annually, all income earned by the trust, after deducting expenses and fees, shall be distributed as follows:

- (1) An amount equal to the income earned on the equivalent of [REDACTED] (\$[REDACTED]) dollars trust principal shall be used to have masses said in memory of Grantor, [REDACTED], and his beloved wife [REDACTED].

Upon termination, all undistributed income and remaining trust principal shall be distributed to the income beneficiaries listed in Section 3B of this Article II in the same percentages as set out in Section 3B of this Article II, except that the first [REDACTED] (\$[REDACTED]) dollars shall be distributed for the purpose of having masses said in memory of Grantor, [REDACTED], and his beloved wife, [REDACTED].

The trust was originally a revocable grantor's trust for the benefit of [REDACTED]. He died on [REDACTED] and your organization has filed Form 1041 on an annual basis.

Section 501(c)(3) of the Code provides for the exemption from Federal Income Tax of corporations organized and operated exclusively for religious, charitable, literary, scientific, and educational purposes; no part of the net earnings of which inures to any private shareholder or individual.

Section 1.501(c)(3)-1 of the Tax Regulations relates to the definition of the organization and operation of organizations described in Section 501(c)(3). It is quoted, in part, as follows:

[REDACTED]

"(a) Organizational and operational tests. (1) In order to be exempt as an organization described in Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt. (2) The term "exempt purpose or purposes", as used in this section, means any purpose or purposes specified in Section 501(c)(3)...."

"(b) Operational test. (1) Primary activities. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. (2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals..."

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in Section 501(c)(3), the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. If an organization fails to meet either organizational or the operational test it is not exempt.

Section 1.501(c)(3)-1(e)(1) of the Income Tax Regulations provides that "an organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization seeking exemption under Section 501(c)(3) to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.



Section 1.501(c)(3)-(b)(4) of the Income Tax Regulations provides that an organization is not organized exclusively for one or more exempt purposes, unless its assets, upon dissolution, are dedicated to Section 501(c)(3) purposes.

Revenue Ruling 69-256, 1969-1 C.B. 150, stated a testamentary trust established to make annual payments to exempt charitable organizations and to use a fixed sum from annual income for the perpetual care of the testator's burial lot is not exempt under Section 501(c)(3).

Your organization fails to qualify for exempt status under Section 501(c)(3) because a set amount of your income and trust principal is used to have masses said for the grantor and his wife. In addition, your trust is authorized to make payments for the perpetual care of the grantor's burial lot. These activities serve private rather than public interests and are outside the scope of Section 501(c)(3).

Accordingly, we have concluded that you are not entitled to recognition of exemption from Federal Income Tax under Section 501(c)(3) of the Code, since you are not organized and operated exclusively for charitable, religious, or other exempt purposes within the meaning of Section 501(c)(3).

You are required to file Federal Income Tax Returns.

Contributions made to you are not deductible by the donors as charitable contributions as defined in Section 170(c) of the Code.

If you do not agree with these conclusions, you may within thirty days from the date of this letter, file a brief of the facts, law and arguments (in duplicate) which clearly sets forth your position. In the event you desire an oral discussion of the issues, you should so indicate in your submission. A conference will be arranged in the Regional Office after you have submitted your brief to the Chicago District Office and we have had an opportunity to consider the brief and it appears that the conclusions reached are still unfavorable to you. Any submission must be signed by one of your principal officers. If the matter is to be handled by a representative, the Conference and Practice Requirements regarding the filing of a power of attorney and evidence of enrollment to practice must be met. We have enclosed Publication 522, Exempt Organization Appeal Procedures for Adverse Determinations, which explains in detail your rights and procedures.

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service".

Please keep this determination letter in your permanent records.

If you agree with this determination, please sign and return the enclosed Form 6018.

If we do not hear from you within 30 days from the date of this letter, this determination will become final. In accordance with Code Section 6104(c), we will notify the appropriate State officials of this action.

Very truly yours,

[REDACTED]

District Director

Enclosures:  
Publication 892  
Form 6018